

cannot or will not achieve its applicable minimum capital requirement.

(ii) Failure to respond within 30 days of receipt, or such other time period as may be specified by the Office, may constitute a waiver of any objections to the capital directive unless the Office grants an extension of the time period for good cause.

(4) *Decision.* After the closing date of the savings association's response period, or upon receipt of the savings association's response, if earlier, the Office shall consider the savings association's response and may seek additional information or clarification of the response. Thereafter, the Office will determine whether or not to issue a capital directive and, if one is to be issued, whether it should be as originally proposed or in modified form.

(5) *Service and effectiveness.* (i) Upon issuance, a capital directive will be served upon the savings association. It will include or be accompanied by a statement of reasons for its issuance and shall address the responses received during the response period.

(ii) A capital directive shall become effective upon the expiration of 30 days after service upon the savings association, unless the Office determines that a shorter effective period is necessary either on account of the public interest or in order to achieve the capital directive's purpose. If the savings association has consented to issuance of the capital directive, it may become effective immediately. A capital directive shall remain in effect and enforceable unless, and then only to the extent that, it is stayed, modified, or terminated by the Office.

(6) *Change in circumstances.* Upon a change in circumstances, a savings association may submit a request to the OTS to reconsider the terms of the capital directive or consider changes in the savings association's capital plan issued under a directive for the savings association to achieve its minimum capital requirement. If the OTS believes such a change is warranted, the OTS may modify the savings association's capital requirement or may refuse to make such modification if it determines that there are not significant changes in circumstances. Pending a decision on reconsideration, the

capital directive and capital plan shall continue in full force and effect.

(b) *Relation to other administrative actions.* The Office—

(1) May consider a savings association's progress in adhering to any capital plan required under this section whenever such savings association or any affiliate of such savings association (including any company which controls such savings association) seeks approval for any proposal that would have the effect of diverting earnings, diminishing capital, or otherwise impeding such savings association's progress in meeting its minimum capital requirement; and

(2) May disapprove any proposal referred to in paragraph (b)(1) of this section if the Office determines that the proposal would adversely affect the ability of the savings association on a current or pro forma basis to satisfy its capital requirement.

[54 FR 49649, Nov. 30, 1989, as amended at 55 FR 13517, Apr. 11, 1990; 57 FR 14335, Apr. 20, 1992; 57 FR 33440, July 29, 1992; 60 FR 66719, Dec. 26, 1995; 66 FR 13009, Mar. 2, 2001]

§ 567.5 Components of capital.

(a) *Core Capital.* (1) The following elements,³ less the amount of any deductions pursuant to paragraph (a)(2) of this section, comprise a savings association's core capital:

(i) Common stockholders' equity (including retained earnings);

(ii) Noncumulative perpetual preferred stock and related surplus;⁴

(iii) Minority interests in the equity accounts of subsidiaries that are fully

³Stock issues where the dividend is reset periodically based on current market conditions and the savings association's current credit rating, including but not limited to, auction rate, money market or remarketable preferred stock, are assigned to supplementary capital, regardless of cumulative or noncumulative characteristics.

⁴Stock issued by subsidiaries that may not be counted by the parent savings association on the Thrift Financial Report, likewise shall not be considered in calculating capital. For example, preferred stock issued by a savings association or a subsidiary that is, in effect, collateralized by assets of the savings association or one of its subsidiaries shall not be included in capital. Similarly, common stock with mandatorily redeemable provisions is not includable in core capital.

consolidated. However, minority interests in consolidated ABCP programs sponsored by a savings association are excluded from the association's core capital or total capital base if the savings association excludes the consolidated assets of such programs from risk-weighted assets pursuant to § 567.6(a)(3);

(iv) Nonwithdrawable accounts and pledged deposits of mutual savings associations (excluding any treasury shares held by the savings association) meeting the criteria of regulations and memoranda of the Office to the extent that such accounts or deposits have no fixed maturity date, cannot be withdrawn at the option of the accountholder, and do not earn interest that carries over to subsequent periods;

(v) The remaining goodwill (FSLIC Capital Contributions) resulting from prior regulatory accounting practices as provided in paragraph (1) of the definition for *qualifying supervisory goodwill* in § 567.1 of this part.

(2) *Deductions from core capital.* (i) Intangible assets, as defined in § 567.1 of this part, are deducted from assets and capital in computing core capital, except as otherwise provided by § 567.12 of this part.

(ii) Servicing assets that are not includable in core capital pursuant to § 567.12 of this part are deducted from assets and capital in computing core capital.

(iii) Credit-enhancing interest-only strips that are not includable in core capital under § 567.12 of this part are deducted from assets and capital in computing core capital.

(iv) Investments, both equity and debt, in subsidiaries that are not includable subsidiaries (including those subsidiaries where the savings association has a minority ownership interest) are deducted from assets and, thus core capital except as provided in paragraphs (a)(2)(v) and (a)(2)(vi) of this section.

(v) If a savings association has any investments (both debt and equity) in one or more subsidiaries engaged as of April 12, 1989 and continuing to be engaged in any activity that would not fall within the scope of activities in which includable subsidiaries may engage, it must deduct such investments

from assets and, thus, core capital in accordance with this paragraph (a)(2)(v). The savings association must first deduct from assets and, thus, core capital the amount by which any investments in such subsidiary(ies) exceed the amount of such investments held by the savings association as of April 12, 1989. Next the savings association must deduct from assets and, thus, core capital the lesser of:

(A) The savings association's investments in and extensions of credit to the subsidiary as of April 12, 1989; or

(B) The savings association's investments in and extensions of credit to the subsidiary on the date as of which the savings association's capital is being determined.

(vi) If a savings association holds a subsidiary (either directly or through a subsidiary) that is itself a domestic depository institution, the Office may, in its sole discretion upon determining that the amount of core capital that would be required would be higher if the assets and liabilities of such subsidiary were consolidated with those of the parent savings association than the amount that would be required if the parent savings association's investment were deducted pursuant to paragraphs (a)(2)(iv) and (a)(2)(v) of this section, consolidate the assets and liabilities of that subsidiary with those of the parent savings association in calculating the capital adequacy of the parent savings association, regardless of whether the subsidiary would otherwise be an includable subsidiary as defined in § 567.1 of this part.

(b) *Supplementary Capital.* Supplementary capital counts towards a savings association's total capital up to a maximum of 100% of the savings association's core capital. The following elements comprise a savings association's supplementary capital:

(1) *Permanent Capital Instruments.* (i) Cumulative perpetual preferred stock and other perpetual preferred stock⁵

⁵Preferred stock issued by subsidiaries that may not be counted by the parent savings association on the Thrift Financial Report likewise may not be considered in calculating capital. Preferred stock issued by a savings association or a subsidiary that is, in effect, collateralized by assets of the savings

Office of Thrift Supervision, Treasury

§ 567.5

issued pursuant to regulations and memoranda of the Office;

(ii) Mutual capital certificates issued pursuant to regulations and memoranda of the Office;

(iii) Nonwithdrawable accounts and pledged deposits (excluding any treasury shares held by the savings association) meeting the criteria of 12 CFR 561.42 to the extent that such instruments are not included in core capital under paragraph (a) of this section;

(iv) Net worth certificates either issued pursuant to regulations and memoranda of the Office, or that the FDIC is committed to purchase;

(v) Income capital certificates;

(vi) Perpetual subordinated debt issued pursuant to regulations and memoranda of the Office; and

(vii) Mandatory convertible subordinated debt (capital notes) issued pursuant to regulations and memoranda of the Office.

(2) *Maturing Capital Instruments.* (i) Subordinated debt issued pursuant to regulations and memoranda of the Office;

(ii) Intermediate-term preferred stock issued pursuant to regulations and memoranda of the Office and any related surplus;

(iii) Mandatory convertible subordinated debt (commitment notes) issued pursuant to regulations and memoranda of the Office; and

(iv) Mandatorily redeemable preferred stock that was issued before July 23, 1985 or issued pursuant to regulations and memoranda of the Office and approved in writing by the FSLIC for inclusion as regulatory capital before or after issuance.

(3) *Transition rules for maturing capital instruments—*(i) *Maturing capital instruments issued on or before November 7, 1989.* All maturing capital instruments issued on or before November 7, 1989, are includable in supplementary capital to the extent such instruments were includable in capital pursuant to the regulations of the OTS in effect as of that date, including any applicable amortization schedules. With the prior approval of the OTS, a savings association may include maturing capital in-

struments issued on or before November 7, 1989, in supplementary capital in accordance with the treatment set forth in paragraph (b)(3)(ii) of this section.

Years to maturity of outstanding subordinated debt	Percent included in supplementary capital
Greater than or equal to 7	100
Less than 7 but greater than or equal to 6	86
Less than 6 but greater than or equal to 5	71
Less than 5 but greater than or equal to 4	57
Less than 4 but greater than or equal to 3	43
Less than 3 but greater than or equal to 2	29
Less than 2 but greater than or equal to 1	14
Less than 1	0

(ii) *Maturing capital instruments issued after November 7, 1989.* A savings association issuing maturing capital instruments after November 7, 1989, may choose, subject to paragraph (b)(3)(ii)(C) of this section, to include such instruments pursuant to either paragraph (b)(3)(ii)(A) or (b)(3)(ii)(B) of this section.

(A) At the beginning of each of the last five years of the life of the maturing capital instrument, the amount that is eligible to be included as supplementary capital is reduced by 20% of the original amount of that instrument (net of redemptions).⁶

(B) Only the aggregate amount of maturing capital instruments that mature in any one year during the seven years immediately prior to an instrument's maturity that does not exceed 20% of an institution's capital will qualify as supplementary capital.

(C) Once a savings association selects either paragraph (b)(3)(ii)(A) or (b)(3)(ii)(B) of this section for the issuance of a maturing capital instrument, it must continue to elect that option for all subsequent issuances of maturing capital instruments for as long as there is a balance outstanding of such post-November 7, 1989 issuances. Only when such issuances

⁶ Capital instruments may be redeemed prior to maturity and without the prior approval of the Office, as long as the instruments are redeemed with the proceeds of, or replaced by, a like amount of a similar or higher quality capital instrument. However, the Office must be notified in writing at least 30 days in advance of such redemption.

association or one of its subsidiaries may not be included in capital.

have all been repaid and the savings association has no balance of such issuances outstanding may the savings association elect the other option.

(4) *Allowance for loan and lease losses.* Allowance for loan and lease losses established under OTS regulations and memoranda to a maximum of 1.25 percent of risk-weighted assets.⁷

(5) *Unrealized gains on equity securities.* Up to 45 percent of unrealized gains on available-for-sale equity securities with readily determinable fair values may be included in supplementary capital. Unrealized gains are unrealized holding gains, net of unrealized holding losses, before income taxes, calculated as the amount, if any, by which fair value exceeds historical cost. The OTS may disallow such inclusion in the calculation of supplementary capital if the Office determines that the equity securities are not prudently valued.

(c) *Total capital.* (1) A savings association's total capital equals the sum of its core capital and supplementary capital (to the extent that such supplementary capital does not exceed 100% of its core capital).

(2) The following assets, in addition to assets required to be deducted elsewhere in calculating core capital, are deducted from assets for purposes of determining total capital:

(i) Reciprocal holdings of depository institution capital instruments; and

(ii) All equity investments.

[54 FR 49649, Nov. 30, 1989, as amended at 57 FR 33439, July 29, 1992; 57 FR 33440, July 29, 1992; 58 FR 45813, Aug. 31, 1993; 59 FR 4788, Feb. 2, 1994; 60 FR 39232, Aug. 1, 1995; 62 FR 66263, Dec. 18, 1997; 63 FR 42678, Aug. 10, 1998; 63 FR 46524, Sept. 1, 1998; 66 FR 59663, Nov. 29, 2001; 67 FR 31726, May 10, 2002; 68 FR 56536, Oct. 1, 2003; 69 FR 22385, Apr. 26, 2004; 69 FR 44925, July 28, 2004]

§ 567.6 Risk-based capital credit risk-weight categories.

(a) *Risk-weighted assets.* Risk-weighted assets equal risk-weighted on-balance sheet assets (computed under paragraph (a)(1) of this section), plus risk-weighted off-balance sheet activities (computed under paragraph (a)(2) of this section), plus risk-weighted recourse obligations, direct credit substitutes, and certain other positions (computed under paragraph (b) of this section). Assets not included (*i.e.*, deducted from capital) for purposes of calculating capital under § 567.5 are not included in calculating risk-weighted assets.

(1) *On-balance sheet assets.* Except as provided in paragraph (b) of this section, risk-weighted on-balance sheet assets are computed by multiplying the on-balance sheet asset amounts times the appropriate risk-weight categories. The risk-weight categories are:

(i) *Zero percent Risk Weight (Category 1).* (A) Cash, including domestic and foreign currency owned and held in all offices of a savings association or in transit. Any foreign currency held by a savings association must be converted into U.S. dollar equivalents;

(B) Securities issued by and other direct claims on the U.S. Government or its agencies (to the extent such securities or claims are unconditionally backed by the full faith and credit of the United States Government) or the central government of an OECD country;

(C) Notes and obligations issued by either the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation and backed by the full faith and credit of the United States Government;

(D) Deposit reserves at, claims on, and balances due from Federal Reserve Banks;

⁷The amount of the allowance for loan and lease losses that may be included in capital is based on a percentage of risk-weighted assets. The gross sum of risk-weighted assets used in this calculation includes all risk-weighted assets, with the exception of assets required to be deducted under § 567.6 in establishing risk-weighted assets. "Excess reserves for loan and lease losses" is defined as assets required to be deducted from capital under § 567.5(a)(2). A savings association may deduct excess reserves for loan and lease losses from the gross sum of risk-weighted assets (*i.e.*, risk-weighted assets including allowance for loan and lease losses) in computing the denominator of the risk-based capital standard. Thus, a savings association will exclude the same amount of excess allowance for loan and lease losses from both the numerator and the denominator of the risk-based capital ratio.